IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3109 OF 2004

Mahadeo P. Raut & anr. .. .. Petitioners
v/s.
The State of Mah. & ors. .. .. Respondents

Mr.Subhash Jha with Mr.Jimesh Shah, Mr.Dinesh Tiwari, Mr.G. Agarwal, Ms.Geeta Hatkar and Mr.Anil Jadhav for petitioners.

Mr.V.A. Thorat, Advocate General with Mr.R.M.Sawant for res.No.1.

Respondent No.2 is served

Mr.Ghulam Vahanvati, Solicitor General with Mr.Rodrigues and Mr.B.V.Phadnis and Ms.Masurkar for res.No.4.

Mr.B.A. Desai, Additional Solicitor General with Mr.S.S.Pakale for res.No.3.

Mr.C.J.Sawant with Mr.K.R.Belosay for res.Nos.5, 7 & 9.

Mr.K.K.Singhvi i/by Mr.R.S.Datar for res.No.6.

Mr.S.C.Naidu i/by M/s.C.R.Naidu & Co. for res.No.8.

Respondent No.10 in person.

Mr.Y.S.Jahagirdar for res.No.11.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATED : 22ND FEBRUARY 2005

ORAL ORDER : (Per H.L.Gokhale, J.)

1. The petitioners herein claim to be the

Chairman and Secretary of one Shetkari Hitvardhak Sanstha. They have filed this petition based on some information received from respondent No.10 herein concerning the decision of the Departmental Promotion Committee (for short "DPC") promoting certain officers from the State civil service to Indian Administrative Service. The petition makes a grievance on the basis of that information that those selections were tainted and a writ of mandamus is sought directing the preliminary enquiry by respondent No.2-Central Bureau of Investigation ("CBI") with respect to the selection made by DPC of 2003. Prayer (b) of this petition is that in case the enquiry discloses commission of cognizable offence, the necessary investigation be again entrusted to respondent No.2 and be monitored by this Court.

2. In this petition, respondent No.1 is the State of Maharashtra, respondent No.2 is CBI, respondent No.3 is Union of India, respondent No.4 is Union Public Service Commission and respondent Nos.5 to 11 (except respondent No.10) are the various officers who were involved in the process of this DPC. Respondent No.10, as stated above, is the officer, who was not selected in that DPC.

3. Inasmuch as the petition is filed on the basis of the information received from respondent No.10, it will be advisable to refer to Original Application No.683 of 2004 which he has filed in the Central Administrative Tribunal making grievance about his non-selection. This original application has been filed on 9th September 2004. In this original application, he has challenged the Notification dated 29th March 2004 wherein one P.E. Gaikwad and 11 others were appointed to the Indian Administrative Service on probation with immediate effect. The original application refers to a conversation of respondent No.10 on telephone with one N. Rama Rao, who has been joined as respondent No.6 to this writ petition. This conversation, according to respondent No.10, records a sorry state of affairs. In that conversation, this Mr.Rama Rao is reported to have stated that good amount has been paid to the then Chairman of the Selection Committee and two officers whose names are mentioned in Para 4.17 of the original application, were stated to have been pocketed by the lobby which was working to get the IAS nominations.

4. Respondent Nos.4, 5, 6 and 8 have filed their replies opposing this petition. Respondent No.10 has filed his affidavit as well.

. The respondents to this petition (other than respondent No.10) have raised preliminary objection to the maintainability of the petition, firstly, contending that the petitioners have no locus standi in the matter. Besides, if they are concerned in view of the information received by them, the proper course for them is to lodge a complaint with the appropriate Police Authorities of the State and matters are not to be lightly referred to CBI. Secondly, it is contended that essentially it is a service matter which respondent No.10 has already filed to the Central Administrative Tribunal and in such service matters, the Court is not expected to interfere at the instance of another party which tries to convert it into a Public Interest Litigation.

5. Mr.Jha, learned Counsel appearing for the petitioners, submitted that as far as locus standi of the petitioners is concerned, the doctrine of locus standi is foreign to criminal jurisprudence. He has relied upon the observations of the Apex

Court in para-5 in the case of **Manohar Lal vs. Vinesh Anand & others reported in (2001) 5 SCC page 407**. He submitted that whatever may be the individual grievance of respondent No.10, the petitioners are also concerned with clean administration and, therefore, this petition has been filed. He further submitted that where the Executive fails to discharge its responsibility, judiciary must step in and provide a solution. In this behalf, he relied upon a judgment of the Apex Court in the case of **Vineet Narain & others vs. Union of India & anr. reported in (1998) 1 SCC 226**. Lastly, he relied upon a judgment in the case of **State of Haryana & others vs. Bhajanlal & others reported in 1992 Supp (1) SCC 335** and particularly, the observations in para-31 thereof, to submit that when a case is made out disclosing a cognizable offence, the concerned officer has to register the case. In the present case, since the high officers are involved, the petitioners do not expect an appropriate action from the subordinate Police officers and, therefore, a writ of mandamus is sought to the CBI to do the needful.

6. As against these submissions of Mr.Zha, it was pointed by the respondents that as laid down

by the Apex Court in the case of **All India Institute of Medical Sciences Employees' Union (Regd.) through its President vs. Union of India & others reported (1996) 11 SCC 582**, the proper course for any aggrieved party is to lodge a complaint with the appropriate Police Authorities under Section 154 of the Code of Criminal Procedure and a complainant is not expected to approach the High Court by filing a writ petition and to seek a direction that CBI should enter the investigation. The said decision has been followed by the Apex Court in the case of **Gangadhar Janardan Mhatre vs. State of Maharashtra & others reported in (2004) 7 SCC 768**. It was, therefore, submitted that the proper remedy to the petitioners is to approach the Police Authorities of the State. Mr.Vahanvati, learned Solicitor General of India, appearing for respondent No.4-UPSC, pointed out that the question as to whether the High Court can refer the matter for investigation to CBI without the consent of the State Government, has been referred by the Apex Court to a Larger Bench. This is reflected in Para-14 of the judgment in the case of **Central Bureau of Investigation vs. State of Rajasthan & anr. reported in (2001) 3 SCC 333**.

He submitted that this judgment also accepts that, it may be that in some appropriate cases such a reference could be directed by the High Court and Mr.Vahanvati submitted that the same could be so, pending the determination by the Larger Bench. He however emphasized that the Apex Court has clearly stated in that very judgment that these powers are to be invoked sparingly.

7. Mr.Singhvi, learned Counsel appearing for respondent No.6, drew our attention to the affidavit filed by respondent No.6 in this very matter and pointed out that he has disputed this conversation which is relied upon by respondent No.10. In para-5 of his affidavit he has stated as follows:-

> " With reference to para 2 of the petition, I deny that the Respondent No.10 did tape recording of the conversation with me and B.D. Shinde as alleged. I say that I have no occasion to hear and peruse the alleged tape and as far as my knowledge goes, I have not held any such conversation with the Respondent No.10. "

Independent of that submission, Mr.Singhvi has also supported the submissions of the learned Solicitor General and referred to a judgment recently rendered by the Apex Court in the case of **Secretary, Minor Irrigation & Rural Engineering Services, U.P. & others vs. Sahngoo Ram Arya & anr. reported in (2002) 5 SCC 521**. In para-6 of that judgment, the Apex Court has commented that the High Court in that matter had proceeded to direct an inquiry by CBI on the basis of "ifs" and "buts" without coming to a definite conclusion that there was a prima facie case established. The Apex Court further observed as under:-

> " With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

8. As recorded above, the second submission of the contesting respondents was that the main controversy is pending in the Administrative Tribunal and that should be a Forum wherein it ought to be decided. The learned Advocate General referred us to the judgment rendered by the Apex Court in the case of **Ashok Kumar Pandey vs. State**

of West Bengal reported in AIR 2004 SC 280 and particularly referred to the observations at page 285 in para 16. In that paragraph the Apex Court has referred to an earlier judgment in the case of **Dr.Duryodhan Sahu vs. Jitendra Kumar Mishra reported in AIR 1999 SC 114** and has observed that in service matters PILs should not be entertained and the least the High Court could do is to throw them out on the basis of the judgment rendered in Dr.Duryodhan Sahu's case. This judgment has been followed by a Division Bench of this Court while rejecting a similar PIL in a service matter. That order has been rendered by the First Court on 25th August 2004 in P.I.L. No.63 of 2003.

9. We have considered the submissions made by Mr.Jha appearing for the petitioners as well as by the Counsel appearing for the respondents. We quite see the interest sought to be canvassed by the petitioners in clean administration. However, as has been observed by the Apex Court, if they want an investigation, their first remedy is to approach the concerned Police Authorities of the State. We cannot proceed on the presumption that the Authorities of the State will not take necessary action merely because some high officers

of the State are involved. On the lodging of a complaint if no appropriate action is taken, it will certainly be open to the petitioners to take further steps in view of the inaction or lack of proper action on the part of the Police Authorities of the State. Merely because some higher officers in the administration are involved and respondent No.10 has tape-recorded some statements of one high official, presiding over the DPC, one cannot proceed to direct the CBI to start investigation into the matter. As stated above and as held by the Apex Court from time to time, the proper remedy is to approach the Police Authorities of the State.

10. As far as the grievance of respondent No.10 is concerned, we have noted that he has already filed the original application in the Central Administrative Tribunal. The Administrative Tribunal Act gives adequate powers to the Tribunals to record the evidence and to arrive at the appropriate decision. Section 22 of the Administrative Tribunals Act, 1985 lays down the procedure and powers of Tribunals. Sub-section (3) gives the power to summon and enforce the attendance of any person and examine

him on oath. Under sub-clause (e), the Tribunal also has the power to issue commissions for examination of witnesses or documents. In our view, this is a case where if respondent No.10 applies to the Tribunal for recording of the evidence, the Tribunal will consider that application appropriately. The Tribunal has adequate powers under this section to record evidence and then to decide whether any injustice has been done to respondent No.10 due to extraneous considerations. The Tribunal will be the proper Forum to decide the grievance of respondent No.10 on merits on which we are not expressing ourselves.

11. In the circumstances, as stated above, in our view, as far as the prayer of the petitioners for investigation through the CBI is concerned, we do not think that we should entertain the same. It will be open to the petitioners to move the appropriate Police Authorities of the State for the reliefs in that behalf. Whenever the complaint is filed by the petitioners, the Authorities concerned will look into the same expeditiously. As far as respondent No.10 is concerned, he has filed the original application

and it will be open for him to lead the necessary evidence to get his case established in that Forum.

12. The petitioners and respondent No.10 have produced the tapes of the recorded conversation which are lying with the Registrar General of this Court. The Registrar General will transfer those tapes to the Central Administrative Tribunal when they are sought by the Central Administrative Tribunal.

13. During the course of these proceedings, respondent No.10 informed us that he has been transferred to the far off district of Gadchiroli on promotion. He submitted that this transfer was made to a distant place so that it becomes difficult for him to proceed with the original application which is pending in the Central Administrative Tribunal. The learned Advocate General pointed out to us that an order was passed by the First Court in Suo Motu Writ Petition (PIL) No.5629 of 2004 wherein the Division Bench has expressed that with a view to take care of the problem of mal-nutrition in the tribal areas, senior officers be posted in those areas. It is

in pursuance of that direction that good number of officers are now being posted in tribal areas and this list includes the name of respondent No.10 who was to be posted on promotion at Gadchiroli. However, having noted the fact that respondent No.10 has filed the original application which is to be heard in the Central Administrative Tribunal, Mumbai, we suggested the learned Advocate General that if possible, respondent No.10 be retained at a place nearer to Mumbai. He has taken instructions in that behalf and the State Government has issued an order on 21st February 2005 posting respondent No.10 as the Project Officer of the Integrated tribal development scheme at Jawar in District Thane. This will enable respondent No.10 to remain at a nearer place and to prosecute his original application which he has filed in the Administrative Tribunal. We expect the Tribunal to decide it expeditiously.

14. With the aforesaid observations, we dismiss this petition.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)